CONFLICT OF INTEREST COMMISSIONER

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

2007

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Canadian Cataloguing in Publication Data
British Columbia. Commissioner of Conflict of Interest.
Anual report. — 1997/98-

Annual.
Continues: British Columbia. Commissioner of Conflict of Interest. Report of the Commissioner of Conflict of Interest. ISSN 1208-3135.
ISSN 1481-3688 = Annual report – British Columbia. Commissioner of Conflict of Interest

1. British Columbia. Commissioner of Conflict of Interest – Periodicals. 2. Conflict of interests – British Columbia – Periodicals.

JL434.E85B74 353.4'6'0971105 C98-960259-1

BRITISH
COLUMBIA

The Honourable Bill Barisoff, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Mr. Speaker:

I have the honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2007.

This Report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Yours sincerely,

H. A. D. Oliver
Commissioner

Office of the Conflict of Interest Commissioner

The Honourable H.A.D. Oliver, Q.C.
Commissioner

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Introduction

This is the Sixteenth Annual Report of the Office of the Conflict of Interest Commissioner for British Columbia and my final report at the end of almost ten and half years as Commissioner under the *Members' Conflict of Interest Act*. It is presented upon my retirement from office on December 31, 2007 in accordance with the provisions of Section 15 of the Act.

The effective functioning of government in any parliamentary democracy must be firmly founded in the respect in which the members of the public hold their government in general and their elected representatives in particular.

The cornerstone of representative government must be public trust.

The Office of the Conflict of Interest Commissioner

The Office of the Conflict of Interest Commissioner was established by the *Members' Conflict of Interest Act*. The Commissioner is an independent officer of the Legislative Assembly. I was appointed in succession to the first Commissioner, the Honourable E.N. (Ted) Hughes, OC, QC in 1997 by unanimous vote of the Legislative Assembly, moved by the then Premier, and seconded by the then Leader of the Opposition following a report and recommendation from an all-party committee of the Legislative Assembly. The appointment was for a five-year term which expired in 2002 and following some months as Acting Commissioner, I was appointed to a further five-year term which was due to expire in November of this year but was extended to December 31, 2007 to enable me to complete the

seventy-nine statutory interviews with Members, the seventy-nine public disclosure statements and the drafting of my Annual Report.

The Members' Conflict of Interest Act

The Act was first established by the British Columbia Legislature in 1990. Conflict of interest or ethics legislation now exists in every province and territory in Canada as well as federally in both Houses of Parliament. The names of the statutes and the titles of the office holders differ. The office holder may be known as Conflict of Interest Commissioner, Ethics Commissioner, Integrity Commissioner or in the Senate, Ethics Officer. In British Columbia and in other jurisdictions the initial legislation has focussed on conflict of interest. While definitions have some variance in the different jurisdictions as to requisite standards of conduct, conflict of interest proceedings must always reflect one over-riding concern; that Members not use their public office for private gain; neither should there be that perception in the mind of any reasonably well-informed person.

The *Members' Conflict of Interest Act* of British Columbia is attached to this report as Appendix A. The definition of a Conflict of Interest will be found in Section 2.1 and Section 2.2 contains the definition of Apparent Conflict of Interest. This latter provision is the result of a 1992 amendment intended by the then Premier to provide this province with the toughest Conflict of Interest Act in Canada. The Act was until recently the only one in North America prohibiting an **Apparent** Conflict of Interest. What does that mean? It does not mean mere suspicion, and the subsection is worded with care: "*a Member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well-informed person could properly have, that the Members' ability to exercise an official power or perform an official duty or function must have been affected by the Members' private interest".* The apparent conflict prohibition is not there to "second guess" an honest and conscientious Member who for example by reason of a change of circumstances which occurred during a chain of events suddenly finds himself in a position of saying to him or herself, "if I'd realized that such and such was going to happen, I would never had done so and so". The purpose of this prohibition is to discourage unduly technical legalistic arguments and to equip the Commissioner with the ability to deal with the situation where, though the evidence would not suffice to prove with reasonable certainty that

the Member is guilty of an actual breach of the Conflict of Interest prohibition, his conduct is nevertheless surrounded by an air of ethical suspicion. To put it differently, it does not pass the "smell test". I have found the "apparent conflict" subsection to be of value and that its existence makes Members ultra careful – as it should.

There are four specific prohibitions of the Act that it is appropriate to mention at this time.

Conflict of interest prohibition

> ***3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.***

Insider information

> ***4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.***

Influence

> ***5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.***

Accepting extra benefits

> ***7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.***

There is a fifth prohibition with respect to which a complaint may be laid under the *Members' Conflict of Interest Act* alleging a violation of Section 25 of the Constitution Act which prohibits a Member personally or a corporation (in which he or she alone or jointly with close family members holds a significant interest) from accepting from the Crown "money for the supply to the province of any goods, service or work".

Disclosure

Every Member must, within 60 days of being elected and after that annually, file with the Office of the Conflict of Interest Commissioner a

Confidential Disclosure Statement in the form proscribed by the Regulations. This is a very detailed document running into many pages and requiring disclosure of assets, liabilities, sources of income and other financial interest of the Member, the Member's spouse and minor children and private corporations controlled by any of them.

After filing a Confidential Disclosure Statement the Member and the Member's spouse if available must meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice from the Commissioner on the Members obligations under the Act and the Commissioner may recommend the manner in which the Member will comply with those obligations. After filing, the Member must continue to disclose any material change in the assets, liabilities and financial interest by filing a Statement of Material Change with the Commissioner within 30 days of the material change. After meeting with the Member, the Commissioner must prepare a Public Disclosure Statement containing all relevant information and a statement of any gifts or benefits that have been disclosed to the Commissioner. These statements are filed with the Clerk of the Legislative Assembly and are available for public inspection.

Our statute covers all Members of the Legislative Assembly and makes no distinction insofar as its broad coverage is concerned between Members of the Executive Council and private Members of the House but there are some sections that deal solely with the Members of Executive Council, such as Section 9 which prohibits Ministers carrying on a business or profession that would interfere with one's duties in the executive offices of government.

Following retirement from ministerial office the Act imposes a "cooling off" period of two years relating to government contracts with or benefits to a former member of executive council or the acceptance of the same or the right to make representations on behalf of anyone to government, all of which are prohibited or severely restricted.

Commissioner's Opinions and Powers

The Commissioner may receive requests for opinions from Members about their own conduct or proposed conduct; those opinions are confidential unless the Member wishes to make them public. The Commissioner may provide opinions upon request to Executive Council as to compliance with the Act by any Member of Executive Council, or

any Parliamentary Secretary and may also provide opinions upon request to the Legislative Assembly itself.

The Commissioner has authority to investigate and report on alleged violations of the Act by a Member. An allegation of violation can be made by another Member of the House or by a member of the public. In British Columbia any member of the public has direct access to the Conflict of Interest Commissioner and is not required, as in some other jurisdictions, to have complaints filtered by a Member of the Legislative Assembly prior to their submission to the Commissioner. If a violation is found to exist the Commissioner is empowered to recommend to the House a penalty varying from a reprimand to a fine not exceeding $5,000 to suspension from the House to a declaration of vacancy of the offending Member's seat in the Legislative Assembly. The Legislative Assembly may accept or reject the Commissioners' recommendation of a penalty but cannot vary the penalty.

The function which has taken up most of my working hours is the one involving frequent, informal and strictly confidential consultation, discussion and advice. It may take considerable skill and good judgement to recognize that you are in a conflict of interest situation and that is because private and personal interests may cloud a persons' objectivity. So it may be a bit easier to recognize when others are in a conflict than when you are yourself.

It is with this in mind that I have for 10 years by all means possible endeavoured to encourage every Member when in the slightest doubt as to how best to approach some problem with a view to avoiding even the barest possibility of a suggestion of conflict of interest, to discuss the matter with me on a confidential basis so as to enable us jointly to explore all available options, leaving it to the Member to decide for herself or himself which (if any) of the various options presents the most desirable method of achieving the Member's objective and of complying not only with the letter but with the spirit of the legislation. This very informal consultation process has over the years been made use of with ever increasing frequency by Members of all parties and appears to be a very effective means of attaining the objective for which this office was established.

Amending the Act

Although the *Members' Conflict of Interest Act* has stood the test of time, the passage of the years since its original enactment date has indicated certain areas in which amendments might be desirable.

1. Name Change

I suggest that "Integrity Act" or "Members' Integrity Act" (as in Ontario) presents a more positive image of our function and is preferable to the negative image conveyed by the use of the words "conflict of interest". It seems better for the public to associate the word "integrity" with Members of the Legislative Assembly rather than the words "conflict of interest". It is the constant endeavour of this office to prevent conflicts of interest from arising at all.

2. Statement of Purpose and Principles

The *Members' Conflict of Interest Act* is one of those statutes whose intent and purpose only became evident once the Act has been read in full. I suggest that the lack of a Purpose and Principles clause is a defect in the present statute. Greg G. Levine in his book "*The Law of Government Ethics Federal, Ontario and British Columbia*" emphasizes the importance of such statements of purpose and principle and comments adversely on the absence of such a statement in the form of a Preamble from the British Columbia Act. A preamble does not establish new duties or create new offences but rather clarifies the purpose of the Statute both to citizens and to the Legislators whom they have elected to represent them.

The Ontario Integrity Act serves as a useful example and illustrates the underlying concern with impartiality and integrity which forms the basis for our statute.

Preamble - It is desirable to provide a greater certainly in the reconciliation of the private interest and public duties of Members of the Legislative Assembly, recognizing the following principles:

a) The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to the many aspects of life in Ontario and if they can continue to be active in their own communities whether in business, in the practise of a profession or otherwise

b) ***Member's duty to represent their constituents includes broadly representing their constituents' interest in the Assembly and to the Government of Ontario.***

c) ***Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and it's members.***

d) ***Members are expected to act with integrity and impartiality that will bear the closest scrutiny.***

Somewhat similar preambles or statements of purpose appear in the integrity acts or codes of several provinces and of the Senate of Canada. I respectfully recommend the adoption of a similar preamble to the Legislative Assembly.

3. Periodic Review

The *Members' Conflict of Interest Act* exists for the daily guidance of Members of the Legislative Assembly and of Cabinet in their day-to-day duties. It is now some seventeen years old and has not been the subject of regular reviews. I suggest that a section be added to the Act requiring the commissioner at least once every five years to submit a comprehensive review of the Act to the Legislative Assembly thus providing a clear and simple process for addressing changes and improvements in a timely and routine basis. I would impose this duty on the Commissioner rather than on the Legislative Assembly to allay any possible concerns that though some future commissioner might become aware of defects in the legislation in need of remedy, some future Members of the Legislative Assembly might be content to preserve the status quo. The Commissioner – an independent officer of the Legislative Assembly – would not share the same reluctance and could approach a periodic review as a routine part of his duty, unencumbered by any considerations of political desirability.

4. Inquiry by Commissioner – At His Own Discretion

At the present time the Commissioner may conduct an inquiry on receiving a request under Section 29 of the Act. From time to time the Commissioner may receive information indicative of a potential problem or actual breach of the Act. At the present time the Commissioner can only act upon the request of the Members of the Legislative Assembly involved or of another Member of the House or of Cabinet of the Legislature as a whole or of a member of the public. Should the Act be amended to empower the Commissioner

to conduct an inquiry on his own motion? The argument against such a proposition is that if Members feel that they cannot rely on the Commissioner's total impartiality and that the Commissioner has the power to embark on his own investigation without a request as presently required, the result might be that Members would feel they cannot trust the Commissioner sufficiently to speak to him with that absolute frankness and openness which has marked the relationship between Members and the Commissioner for many years.

5. Penalties

The present section reads as follows:

Penalties

22 (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

The existing penalty section limiting the Commissioner's power to recommend a financial penalty is limited to the sum of $5,000, an amount considered appropriate when this statue was drafted 17 years ago. The Commissioner should be careful in the case of a serious breach to avoid recommending the suspension of a Member whenever possible since such a suspension penalizes the Member's constituents by depriving them of representation during the period of suspension. However the alternative monetary penalty presently existing seems totally inadequate as a maximum alternative penalty to suspension for serious infractions. I believe that a considerable increase in the maximum financial penalty (perhaps to $20,000) would provide a significant deterrent and form an acceptable alternative penalty to a period of suspension.

6. Carrying on Business

Section 9 of the Act reads as follows:

Carrying on business

9 (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a

form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Section 9(5) of the Act provides that for the purposes of this section the management of routine personal financial interests does not constitute carrying on a business. I suggest an amendment providing that the performance of the minimum activities required (subject to prior approval by the Commissioner) for the sole purpose of maintenance of qualifications in a profession or occupation prescribed by law or by the governing bodies of the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession. The purpose of this amendment is to avoid unnecessary hardship or undue damage to a Member's professional standing since certain professions terminate the practitioner's right to practice after a certain non-practicing period.

I dealt with this in the case of a physician Member of the last House by allowing him to attend his practice on occasional Saturdays so as to preserve his professional standing. I suggest the creation of a statutory basis for such a ruling in the future.

7. Evasion

I suggest the addition of a new section to provide that a Member shall not take any action that has as its purpose the evasion of the Member's obligations under this Act. This amendment is based on a section of the Newfoundland Conflict of Interest Act and the Conflict of Interest Code for Senators. Its purpose is to discourage the creation of "smoke and mirror" devices intended to create a false or misleading appearance of compliance with the Act.

8. Acceptance of Fees, Gifts and Personal Benefits

Section 7 of the Act provides that a Member must not accept a fee, gift or personal benefit. I suggest that this prohibition be extended to include a Member's spouse or minor child and that the $250.00 limit established 17 years ago be increased to $750.00.

9. Political Staff

Should the class of individuals subject to the duties and prohibitions of the *Members' Conflict of Interest Act* be extended?

Recent experience indicates that consideration be given to the inclusion of political staff including Ministerial Assistants, Chief of Staff in the Office of the Premier, and Deputy Ministers in the list of persons subject to the *Members' Conflict of Interest Act*.

It was my original intention not to include Deputy Ministers under the political staff member heading on the basis that they were part of the public service with the advantage of many years of training and experience under the same conflict of interest and ethics regime as other members of the public service. On further reflection, I have come to realize that at present time Deputy Ministers may not always have that background and may, in effect, be the most influential members of a Minister's staff and should properly be included in the political staff category.

Some of these issues have been raised in Mr. John Horgan, MLA Private Member's Bill M216-2007. It may be thought preferable to have this matter dealt with as public business rather than by virtue of a private members bill.

10. Members' Legal Fees

I suggest that the Act might be amended to provide that the Commissioner may in the exercise of his absolute discretion, recommend that a Member who is the subject of an investigation or inquiry under the *Members' Conflict of Interest Act* be reimbursed in an amount approved by the Commissioner for his or her legal costs in respect of such investigation or inquiry.

An inquiry under the *Members' Conflict of Interest Act* is likely to result in the Members, who is the subject of that inquiry, having to retain counsel in view of the fact that a Member's entire political future may be severely affected or destroyed by its' outcome.

History of My Term of Office

Over the almost ten and a half years of my service as Conflict of Interest Commissioner for British Columbia I have only on two occasions found it necessary to find a Member in violation of the *Members' Conflict of Interest Act.* The first, fairly shortly after my appointment, involved a very senior Member of Cabinet who received certain benefits from a personal friend, a building contractor who at the same time was seeking a provincial casino license. That Member (who incidentally was acquitted of criminal charges arising out of the same set of circumstances) resigned his office part way through my Inquiry, at the conclusion of which I found him to be in breach of the *Members' Conflict of Interest Act.* It was my view that the loss of his high office constituted in and of itself as heavy a penalty as could be imposed upon any politician and I therefore did not recommend the imposition of any penalty. The other complaint involved a private Member who had written letters to a member of the public service on behalf of a relative using his official letterhead. I found him in violation of the Act and reported to the Speaker that I thought the offence was due to inadvertence, that I had discussed the matter with the Member and felt that the offence would not be repeated. I was wrong; it was repeated and the Member was excluded from his party caucus. All this happened many years ago and we have for almost ten years been virtually scandal-free as far as offences by Members under the *Members' Conflict of Interest Act* of British Columbia are concerned. I attribute this to the constant strong support I have received from the leaders from time to time of both parties, to the care exercised by virtually every Member of the House to comply with the letter and the spirit of the *Members' Conflict of Interest Act* with a special regard to the "apparent conflict of interest" section and to the apparent effectiveness of the policy of my office in its endeavour to conduct a pro-active rather than a re-active operation or to put it differently to be guided by the time-honoured principle that "Prevention is Better than Cure".

It has been my experience over the past ten and a half years that Members of the Legislative Assembly of British Columbia are honourable, honest and well-intentioned people who have entered public life with the objective of being of service to their fellow citizens and who would not knowingly conduct themselves in a manner that contravened the Act. When on rare occasions a Member approached the borderline of the apparent conflict of

interest prohibition it was generally due to a lack of that life experience that enables one to recognize temptation before it rears it ugly head.

The spirit of mutual trust which has developed between all Members and the Conflict of Interest Office and the availability of consultation with the Commissioner by telephone or in person by day or night on every day of the year have been, I believe, of value in pitfall avoidance.

Public Complaints

I have during the past year continued to receive a variety of requests for opinions from members of the public. Many of these are useful in developing conflict avoidance policies. Many are sent by well-meaning members of the public who are unfamiliar with the text of *Members' Conflict of Interest Act* and believe the Commissioner to be endowed with almost sovereign powers to direct the manner in which government should be conducted. Some few are sent manifestly to vent party-political or personal spleen, but all are gratefully received and all are responded to. It is my firm belief that the Conflict of Interest Commissioner should be available to anybody, and that there are too many persons in public power who may tend to brush off private complainants who appear to be troublesome, and that a legislative officer such as the Conflict of Interest Commissioner should play his part in giving a human face to the political process.

External Relations

A Conflict of Interest Commissioner's job is a lonely one. The Commissioner is a one-man band and his decisions must be essentially his own. The Commissioner is assisted by the existence of the Canadian Conflict of Interest Network (CCOIN) consisting of his equivalent opposite numbers in each of the provinces and territories and of the Ethics Officer of the Senate of Canada and the House of Commons (Conflict of Interest and Ethics Commissioner). CCOIN members meet annually for a two-day conference in different provincial capitals or Ottawa to discuss problems of common concern. They may also during the rest of the year consult with each other to deal with a problem which to one commissioner may appear unique but which a colleague at the other end of the country has had to deal with on another occasion. The decision of other commissioners are of course not binding on the one who faces the problem for the first time but are generally helpful in arriving at an appropriate determination. The Commissioner is a member of the Council on Government Ethics Law, an international body headquartered in the United States and is able to maintain contact and from time to time exchange views with members in other jurisdictions.

I have during my term of office consulted or been consulted by ethics officers, speakers or presidents of national assemblies, elected members, officers of foreign parliamentary bodies (either in this jurisdiction or theirs) of Australia, Thailand, France, Germany, Serbia and Montenegro, Great Britain, the Russian Federation and some of the United States. I have listened with interest to what they have told me of the ethical practices in their jurisdictions and they, in turn, have listened with respect to our own methods of promoting ethics in government and avoiding conflicts of interest.

Commissioner's Remarks

In my almost ten and a half years as Conflict of Interest Commissioner and after hundreds of interviews with Members of Executive Council, Members of the Legislative Assembly and members of the general public who have shown a sufficient interest in our conflict of interest procedure to call or write to the commissioner from time to time, I have formed the view that the *Members' Conflict of Interest Act* has withstood the test of time.

The Act is however 17 years old and would in my view benefit from certain amendments which I have outlined above. It is a statute passed, with the approval of all parties with the common aim of establishing in as concise a form as possible the basic obligation of all Members of the Legislative Assembly to arrange their personal affairs and to perform the duties of their respective offices as to promote public confidence and respect for our political process generally and the Legislative Assembly in particular. The Members have by unanimous resolution entrusted the administration of the Act to a Commissioner, independent and unbiased, without party political allegiance who has elected during his term of office not to exercise his franchise as a voter either provincially or federally. It has throughout my tenure been my aim to pursue a proactive approach based on developing a close and ongoing relationship between each Member of the Legislature and the Commissioner and to practice what I have termed "preventive political medicine". I have, to put it quite simply tried to avoid the conduct of formal inquiries into breaches of the *Members' Conflict of Interest Act* by the simple expedient of stopping those breaches from arising in the first place. To do this, it was necessary to establish an atmosphere of complete mutual trust between each Member of the Legislative Assembly and the Commissioner. In that endeavour I have had the unfailing support of successive premiers and opposition leaders and the ready cooperation of every Member of the House.

Office Administration

My many years of office have been made significantly easier as a result of the competence, integrity and loyalty of my small office staff, Jill Robinson, Daphne Thompson and Betsi Curdie.

Jill Robinson and Daphne Thompson – who together share the appointment of Administrative Assistant – and whom I inherited from my predecessor the Honourable E. H. (Ted) Hughes, OC, QC, represent our front line. It is Jill and Daphne who receive all initial telephone inquiries, and deal with all callers – be they members of the public or Ministers of the Crown - with courtesy, kindness and understanding.

Betsi Curdie is our Research Officer with an uncanny ability to make sense of some of the unusual requests received by us – in some cases from citizens not totally familiar with the nature and extent of the Commissioner's powers and duties. She is also in charge of our

small budget and fiercely keeps us within its' narrow limits. This year again she has assisted in making it possible for us to operate well below the sum we are authorized to expend.

These exceptional staff members have a remarkable talent for recalling past problems and decisions of long ago which can be of considerable assistance to the Commissioner, and they maintain cordial relations with MLA's, Ministers, my opposite numbers in other provinces and territories and both Houses of Parliament and the members of their staff, to the benefit of all involved.

To these three members of my part-time staff, I extend my warmest thanks and bequeath them to my successor as the most valuable asset of the Office of the Conflict of Interest Commissioner.

Farewell Message

I also wish to extend my gratitude to Mr. George MacMinn, OBC, QC, the Clerk of the Legislature, his assistants and staff, to the Officers of the House, the Sergeant-at-Arms and his staff and all Ministerial and personal staff of MLA's – and lastly to each and every Member of the Legislative Assembly of British Columbia, present and past, who have enabled me to perfcrm my duties with - I hope – reasonable effectiveness and with great pleasure.

In closing, I ask all Members to extend to my successor Mr. Paul Fraser, QC, the same measure of courtesy and cooperation they have extended to me over the years, and I wish Commissioner Fraser every success and happiness in one of the most fascinating and – I believe – useful offices in our Parliamentary system.

Appendix A – *Members' Conflict of Interest Act*

Members' Conflict of Interest Act

R.S.B.C. 1996, CHAPTER 287

[Consolidated August 17, 2004]

Queen's Printer for British Columbia©
Victoria, 2006

MEMBERS' CONFLICT OF INTEREST ACT

CHAPTER 287

[Updated to August 17, 2004]

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Definitions

1 In this Act:

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,

(b) affects a member as one of a broad class of electors, or

(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

Former members of Executive Council and former parliamentary secretaries

8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

Carrying on business

9 (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter

with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

12 The failure of any member to comply with section 10 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) [Repealed 1999-44-85.]

Annual report

15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) Subject to subsection (2.1), the disclosure statement must contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other

corporation is an affiliate of the first named corporation, as determined under section 2 (1) to (4) of the *Business Corporations Act.*

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

(a) advise the member of the fact, in writing, and

(b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), **"material change"** means a material change as defined in the regulations.

Public disclosure statement

17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).

(3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act.*

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

(3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

Special assignments

20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

21 (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) If the request for an opinion is made under section 19 or the commissioner undertakes a special assignment under section 20, the commissioner has the powers of a commissioner under sections 15 and 16 of the *Inquiry Act*.

(3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.

(6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Penalties

22 (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5 000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

25 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

Queen's Printer for British Columbia©
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